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Attorneys for Defendant
FACTORTRUST, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TOM HICKE,)	Case No. <u>'15CV1977 WQHBLM</u>
)	
Plaintiff,)	
)	
vs.)	FACTORTRUST, INC.'S
)	NOTICE OF REMOVAL OF
FACTOR TRUST,)	ACTION UNDER 28 U.S.C.
)	§ 1441(A) FEDERAL QUESTION
Defendant.)	
)	
)	
)	

TO THE CLERK OF THE ABOVE ENTITLED COURT:

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1331, 1141, and 1446, Defendant FactorTrust, Inc.¹ ("FactorTrust") by its attorneys and with full reservation of any and all defenses, objections, and exceptions hereby gives notice that the above-captioned action pending in the Superior Court of the State of California, County of San Diego, is hereby removed to the United States District Court for the Southern District of California. In support of removal, FactorTrust respectfully states the following:

¹ The Complaint misidentifies FactorTrust as "Factor Trust." The proper party, and the party filing this notice of removal, is FactorTrust, Inc.

STATEMENT OF THE STATE COURT ACTION

1
2 1. On June 17, 2015, Plaintiff Tom Hicke (“Plaintiff”) filed an action in
3 the Superior Court of the State of California, County of San Diego, entitled Tom
4 Hicke, Plaintiff, vs. Factor Trust, Defendant, as Case No. 37-2015-00020507-CU-
5 NP-CTL (the “State Court Action”). FactorTrust is the only named defendant in
6 the State Court Action. A copy of the complaint is attached hereto as Exhibit
7 “A.”

8 2. On August 4, 2015, Plaintiff served FactorTrust with a copy of the
9 Complaint in the State Court Action.

10 3. The gravamen of Plaintiff’s State Court Action is that FactorTrust
11 allegedly violated the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681a *et*
12 *seq.*

GROUND FOR REMOVAL – FEDERAL QUESTION

13
14 4. Plaintiff has alleged that FactorTrust is an “information furnisher”
15 governed by the FCRA, Compl. ¶ 3, and that it furnished improper information
16 about Plaintiff to one or more credit reporting agencies, *id.* ¶¶ 5, 7. From those
17 allegations, Plaintiff asserts a single cause of action under the § 1681s-2(b) of the
18 FCRA. *Id.* ¶ 15.

19 5. Federal courts have original jurisdiction of all cases that arise under
20 federal law, 28 U.S.C. § 1331, and such cases are explicitly within this Court’s
21 removal jurisdiction. 28 U.S.C. § 1441(b) (providing that the courts have
22 removal jurisdiction for any action which the district courts have original
23 jurisdiction founded on a claim or right arising under the Constitution, treaties, or
24 laws of the United States).

25 6. Such federal question jurisdiction exists where the complaint alleges
26 a purported violation of federal law as an essential element of a cause of action.
27 *Cook Inlet Region, Inc. v. Rude*, 690 F.3d 1127, 1130 (9th Cir. 2012) (“A case
28 arise[es] under federal law within the meaning of § 1331 . . . if a well-pleaded

1 complaint establishes either that federal law creates the cause of action or that the
2 plaintiff's right to relief necessarily depends on resolution of a substantial
3 question of federal law.") (alteration in original).

4 7. The operative trigger for whether a claim can be brought for
5 violation of a federal statute is whether the statute contains a private right of
6 action. *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804 (1986). Congress
7 created an express private right of action in the FCRA for consumers to enforce
8 the Act's provisions. 15 U.S.C. §§ 1681n & 1681o; *Nelson v. Chase Manhattan*
9 *Mortg. Corp.*, 282 F.3d 1057, 1059 (9th Cir. 2002).

10 8. Here, the State Court Action alleges on its face a violation of federal
11 law. That claim under the FCRA is founded on the statute's private right of
12 action for consumers. This Court therefore has subject matter jurisdiction
13 pursuant to 28 U.S.C. § 1331 and the State Court Action's removal under 28
14 U.S.C. § 1441 is necessary and appropriate.

15 9. Additionally, the FCRA specifically vests district courts with
16 jurisdiction over any "action to enforce any liability created under [the FCRA]." 15 U.S.C. § 1681p. Because Plaintiff seeks to enforce liabilities created under the
17 FCRA, this Court has express jurisdiction, per statute, over this case.

18 VENUE

19 10. Venue is proper in this district under 28 U.S.C. § 1441(a) because it
20 embraces the County where the State Court Action was filed and is pending.

21 TIMELINESS OF REMOVAL

22 11. FactorTrust files this notice within thirty (30) days after its receipt by
23 service of the Complaint in the State Court Action, in accordance with 28 U.S.C.
24 § 1446(b). FactorTrust was served with the Complaint on August 4, 2015.

25 ATTACHMENT OF STATE COURT PLEADINGS

26 12. FactorTrust has complied with 28 U.S.C. § 1446(a) by attaching all
27 process, pleadings, and orders on file in the State Court Action collectively as
28

1 Exhibits “A,” “B,” “C,” “D,” “E” and “F” which are the complaint, the
2 summons, the civil cover sheet, the Notice of Case Assignment, the Alternative
3 Dispute Resolution Information documents and the Notice of Eligibility to eFile
4 and Assignment to Imaging Department, respectively. The latter two Exhibits
5 are not “pleadings, process and orders” but they were served on FactorTrust and
6 are attached hereto out of an abundance of caution.

7
8 Respectfully submitted,

9 Dated: September 3, 2015

KILPATRICK TOWNSEND &
STOCKTON LLP

11 By: /s/ Emil W. Herich
12 EMIL W. HERICH
13 Attorney for Defendant FACTORTRUST,
14 INC.

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system and I hereby certify that I have served upon Plaintiff by mailing, postage prepaid, first class mail, a copy of such document as shown below:

**FACTORTRUST, INC.'S NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. § 1441(A) FEDERAL
QUESTION**

at the address indicated below:

Todd M. Friedman
Suren N. Weerasuriya
Adrian R. Bacon
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324 S. Beverly Dr. #725
Beverly Hills, CA 90212

/s/ Angelina Caviles
Angelina Caviles